Amanah Raya Bhd (suing as administrator for the estate of Kantilal Prabhulal Doshi, deceased) v Jigarlal Kantilal Doshi & Ors and other suits

HIGH COURT (JOHOR BAHRU) — NOS 31–143 OF 2011, 22–195 OF 1991, 24M-1141 OF 1997, 31–143 OF 2011, 31–154 OF 2011, 24M-1189 OF 1997, 26–13 OF 2005,22–394 OF 2003 AND 24M-985 OF 1991
VERNON ONG J
10 FEBRUARY 2012

Civil Procedure — Estoppel — Estoppel per rem judicature — General rule forbidding approbation and reprobation — Party estopped by conduct from raising the issue of locus standi

Succession — Letters of administration pendente lite — Application for — Grant of probate revoked by court — Petition by Amanah Raya Berhad for LA pendente lite limited for purposes of continuing and completing pending legal actions by and against estate — Whether power under LA pendente lite can be retrospective — Whether doctrine of relation back applicable — Grant of LA pendente lite essential to preservation and protection of estate — LA pedente lite granted — Probate and Administration Act 1959 s 19

This petition for letters of administration *pendente lite* related to the estate of Kantilal Prabhulal Doshi, deceased ('KP Doshi') who died on 1 July 1991. KP Doshi was survived by his wife Damayanti and his three sons Jigarlal, Tilaklal and Jogesh. Under his will dated 30 April 1991 Damayanti and Jogesh were appointed as executors. Grant of probate was issued to Damayanti and Jogesh on 15 October 1991. Subsequently, the family fell apart with Jigarlal on one side and his mother Damayanti and younger brothers on the other side. Seven civil actions were filed, the first of which was Suit No 22–195 of 1991 ('Suit 195') filed on 17 August 1991. The suits were consolidated. Originating Petition No 26–13 of 2005 ('OP 13') was also consolidated with the actions. Meanwhile, on 29 July 1995, Jigarlal obtained an order from the High Court revoking the grant of probate and the Official Administrator was appointed to administer KP Doshi's estate. On 4 January 2008, a grant of probate was issued to Amanah Raya Berhad ('ARB'). However, upon Jigarlal's appeal, the Federal Court held that ARB could not petition for grant of probate when appointed only as administrator. Hence, ARB petitioned for limited grant of letters of administration *pendente lite*. The petition was taken out by ARB limited for the purposes of continuing and completing the trial of the Consolidated Actions which were fixed for trial between 9 January 2012–13 January 2012. It did not

relate to the general administration of the estate. Jigarlal however contended that ARB's powers to act as the administrator was subject to getting a grant and that the power under a grant was not retrospective. As such, even if a grant was issued, ARB did not have the locus standi to initiate Suit 195. Jigarlal thus sought for the petition to be dismissed or that the court make a limited grant forward and not backwards on the grounds that the doctrine of relation back did not apply.

Held:

(1) The power of the court to issue letters of administration *pedente lite* is provided under s 19 of the Probate and Administration Act 1959. The object of such a grant is to ensure that the estate of the deceased is managed and preserved for the benefit of the beneficiaries. A person unconnected with the suit is the most proper person to be appointed to the office (see paras 9–10).

(2) The objection taken by Jigarlal pertaining to the non-application of the doctrine of relation back was misconceived as Suit 195 was initiated by the executors Damayanti and Jogesh (see para 11).

(3) There is an exception to the general rule in *Ingall v Moran* [1944] 1 KB 160. Relation back exists only in cases where the act done is for the benefit of the estate. Under this exception, the court should consider whether in the particular circumstances of the case an act by an administrator prior to the sealing was for the benefit of the estate. The test is an objective test without reference to the subjective intentions of the administrator when performing the act. If so, that act would be held as valid by the court. On the facts, Suit 195 and OP 13 were brought for the benefit of the estate as they were essential actions to preserve and protect the estate (see para 12).

(4) Jigarlal had previously challenged ARB's authority in two applications to strike out Suit 195 and OP 13. Both applications were subsequently withdrawn by Jigarlal and he agreed to proceed to the trial of the consolidated actions. This approbation and reprobation by Jigarlal was untenable. Jigarlal was therefore estopped by conduct from taking the position that ARB did not have the locus standi to maintain Suit 195 if letters of administration *pedente lite* was granted (see para 13).

(5) It was clear that the grant of letters of administration sought was limited to the prosecution of the on-going consolidated actions. The granting of the letters of administration pendente lite was essential to the preservation and protection of the estate of KP Doshi. Hence, the petition for limited letters of administration *pedente lite* ought to be granted (see para 15).

[Bahasa Malaysia summary

Petisyen bagi surat pentadbiran *pendente lite* ini adalah berkenaan dengan harta Prabhulal Kantilal Doshi, si mati ('KP Doshi') yang meninggal dunia pada 1 Julai 1991. KP Doshi diwarisi oleh isterinya, Damayanti dan tiga orang anaknya Jigarlal, Tilaklal dan Jogesh. Di bawah wasiatnya bertarikh 30 April 1991 Damayanti dan Jogesh telah dilantik sebagai wasi-wasi. Geran probet telah dikeluarkan untuk Damayanti dan Jogesh pada 15 Oktober 1991. Selepas itu, keluarga tersebut berpecah dengan Jigarlal di satu pihak dan Damayanti, ibunya dan adik-adiknya di pihak yang lain. Tujuh tindakan sivil telah difailkan, yang mana yang pertama adalah Saman No 22–195 Tahun 1991 ('Saman 195') yang difailkan pada 17 Ogos 1991. Saman tersebut telah disatukan. Petisyen Pemula No 26–13 Tahun 2005 ('OP 13') juga telah disatukan dengan tindakan-tindakan tersebut. Sementara itu, pada 29 Julai 1995, Jigarlal memperoleh perintah daripada Mahkamah Tinggi untuk membatalkan geran probet dan pentadbir rasmi dilantik untuk mentadbir harta KP Doshi. Pada 4 Januari 2008, geran probet telah dikeluarkan kepada Amanah Raya Berhad ('ARB'). Walau bagaimanapun, atas rayuan Jigarlal, Mahkamah Persekutuan memutuskan bahawa ARB tidak boleh mempetisyen untuk mendapatkan probet apabila hanya dilantik sebagai pentadbir. Oleh itu, ARB mempetisyen untuk geran surat pentadbiran *pendente lite*. Petisyen tersebut telah ditarik oleh ARB terhad bagi tujuan meneruskan dan melengkapkan perbicaraan tindakan-tindakan yang disatukan yang telah ditetapkan untuk perbicaraan antara 9 Januari 2012 hingga 13 Januari 2012. Ia tidak berkaitan dengan pentadbiran umum harta pusaka. Walau bagaimanapun, Jigarlal menegaskan bahawa kuasa ARB untuk bertindak sebagai pentadbir tertakluk hanya untuk mendapatkan geran dan bahawa kuasa di bawah geran bukan bersifar retrospektif. Oleh itu, walaupun geran telah dikeluarkan, ARB tidak mempunyai locus standi untuk memulakan Saman 195. Dengan itu, Jigarlal memohon agar petisyen tersebut ditolak atau agar Mahkamah membuat geran terhad ke hadapan dan bukan ke belakang dengan alasan bahawa doktrin *relation back* tidak terpakai.

Diputuskan:

(1) Kuasa mahkamah untuk mengeluarkan surat pentadbiran *pedente lite* diperuntukkan di bawah s 19 Akta Probet dan Pentadbiran 1959. Objek seperti geran adalah untuk memastikan bahawa harta pusaka si mati diuruskan dan dipelihara untuk manfaat kesemua benefisiari. Seseorang yang tidak berkaitan dengan saman tersebut adalah orang yang paling layak untuk dilantik (lihat perenggan 9–10).

(2) Bantahan yang dibuat oleh Jigarlal berkenaan permohonan ketidakterpakaian doktrin *relation back* adalah suatu salah tanggapan kerana Saman 195 telah dimulakan oleh wasi-wasi Damayanti dan Jogesh (lihat perenggan 11).

(3) Terdapat pengecualian kepada peraturan umum dalam *Ingall v Moran* [1944] 1 KB 160. *Relation back* hanya wujud dalam kes-kes di mana perbuatan yang dilakukan adalah untuk manfaat harta pusaka. Di bawah pengecualian ini, mahkamah harus mempertimbangkan sama ada dalam hal keadaan tertentu kes, suatu perbuatan oleh pentadbir sebelum pemeteraian adalah untuk manfaat harta pusaka. Ujiannya adalah ujian objektif tanpa merujuk kepada niat subjektif pentadbir apabila melakukan perbuatan tersebut. Jika demikian, perbuatan tersebut akan diputuskan sebagai sah oleh mahkamah. Berdasarkan fakta, Saman 195 dan OP 13 telah dibawa untuk manfaat harta pusaka tersebut kerana kesemuanya adalah tindakan-tindakan penting untuk memelihara dan melindungi harta pusaka tersebut (lihat perenggan 12).

(4) Jigarlal telah mencabar kuasa ARB dalam dua permohonan untuk membatalkan Saman 195 dan OP 13. Kedua-dua permohonan tersebut telah ditarik balik oleh Jigarlal dan dia bersetuju untuk meneruskan perbicaraan bagi tindakan-tindakan yang telah disatukan. Penerimaan dan kutukan oleh Jigarlal tidak dapat dibela. Jigarlal diestop daripada mengambil kedudukan bahawa ARB tidak mempunyai locus standi untuk mengekalkan Saman 195 jika surat pentadbiran *pedente lite* telah diberikan (lihat perenggan 13).

(5) Adalah jelas bahawa geran surat kuasa mentadbir yang dipohon terhad kepada pendakwaan tindakan-tindakan yang disatukan yang sedang berjalan. Pemberian surat pentadbiran pendente lite adalah penting untuk pemeliharaan dan perlindungan harta KP Doshi. Oleh itu, petisyen untuk surat pentadbiran *pedente lite* terhad seharusnya dibenarkan (lihat perenggan 15).]

Cases referred to

Caudle v LD Law Ltd [2009] 2 All ER 1020, QBD (refd)
Ingall v Moran [1944] KB 160, CA (distd)
Lily Iskandar & Anor v Bonardy Leo & Ors [1986] 1 MLJ 368, CA (refd)
Mills v Anderson [1984] QB 704, QBD (refd)
Jigarlal Kantilal Doshi v Amanah Raya Berhad [2012] 1 AMR 121, FC (refd)
Maril-Rionebel (M) Sdn Bhd & Anor v Perdana Merchant Bankers Bhd and other appeals [2001] 4 MLJ 187; [2001] 3 CLJ 248, CA (refd)

Legislation referred to

Probate and Administration Act 1959 ss 19, 23, 24

Loh Siew Cheang (Gopal Sreenevasan and Mark Lau with him) for the plaintiffs in nos 195 and 1189 and 13, and for the intervener in 394.
Jeremy Lee (N Krishnan with him) for the first and third defendants in 195, for the plaintiffs in 169, for the first defendant in 985, for the plaintiff in 1141, for the first and ninth respondents in 13 and for the plaintif in 394.

Ambiga Sreenavasan (Khabir Dhillon with him) for the defendant in 169, for the first and second plaintiffs in 985 and intervener in 394.
Mohd Zainuddin Omar (Fund managers/Fortitude) for the defendant in 1141, 1189 and 394.
Jagjit Kaur for the second defendant in 195 and 985.

Vernon Ong J:

[1] This petition for letters of administration *pendente lite* relates to the estate of Kantilal Prabhulal Doshi, deceased ('KP Doshi') who died on 1 July 1991.

BFIEF ACCOUNT OF THE FACTS

[2] The late KP Doshi was survived by his wife Damayanti and his three sons Jigarlal, Tilaklal and Jogesh. Under his will dated 30 April 1991 Damayanti and Jogesh were appointed as executors. The validity of the will is not in dispute. Grant of probate was issued to Damayanti and Jogesh on 15 October 1911.

[3] After KP Doshi's demise, the family fell apart over the principal issue of identification of the assets under the will — with Jigarlal the eldest son on one side and his mother Damayanti and younger brothers Tilaklal and Jogesh on the other side. Seven civil actions were filed, the first of which is Suit No 22–195 of 1991 ('Suit 195') filed on 17 August 1991 by Damayanti and Jogesh as executors. Pursuant to a consent order dated 23 February 2005 in Suit 195, Suit No 22–169 of 1991 ('Suit 169'), Originating Summons No 24–985 of 1991 ('OS 985'), Originating Summons No 24–1141 of 1997 ('OS 1141') and Originating Summons No 24–1189 of 1997 ('OS 1189') were consolidated. On 28 February 2006, Originating Petition No 26–13 of 2005 ('OP 13') was consolidated to be heard with the consolidated actions. On 2 November 2011, Suit No 22–394 of 2003 ('Suit 394') was reconsolidated with the consolidated actions and set down for trial from 9–13 January 2012. For convenience, all the seven consolidated actions are hereinafter referred to as 'the consolidated actions'.

[4] Meanwhile, on 29 July 1995, Jigarlal obtained an order from the High Court revoking the grant of probate and the official administrator was appointed to administer KP Doshi's estate; this order was affirmed by the Court of Appeal on 4 June 1998.

[5] On 4 January 2008, a grant of probate was issued to Amanah Raya Bhd ('ARB'). On 3 November 2008, Jigarlal's application to set aside the grant of probate was dismissed by the High Court. Jigarlal's appeal to the Court of Appeal was dismissed on 25 August 2010. However, on 9 December 2010,

Jigarlal obtained leave from the Federal Court on the question of (i) whether ARB could petition for grant of probate under the Public Trustee Corporation Act 1995 when appointed only as administrator? and (ii) whether a grant of probate is a nullity when a caveat against a grant was in force? The Federal Court's decision was delivered on 19 October 2011. On the first question, the Federal Court answered in the negative. Since ARB was appointed as administrator, ARB should have applied for a grant of administration instead, and not for a grant of probate. The grant of probate was declared to be a nullity. On the second question, the Federal Court held that even if the principal registry had overlooked the caveat Jigarlal would have been deprived to contest his right; as such a grant made in defiance of a caveat would be a nullity.

[6] Prior to the presentation of the petition for limited grant of letters of administration *pendente lite*, ARB also presented a petition for letters of administration with will attached on 2 November 2011 (the 'probate action').

ARB'S SUBMISSION

[7] The petition was taken out by ARB pending the probate action for the purposes of continuing and completing the trial of the consolidated actions which were fixed for trial between 9–13 January 2012. It is limited to the prosecution of the trial of the consolidated actions; it does not relate to the general administration of the estate. The court is empowered under s 19 of the Probate and Administration Act 1959 (Act 97) to issue letters of, administration *pendente lite* to ensure that the estate of KP Goshi is managed and preserved for the benefit of those to be entitled thereto (*Williams, Mortimer and Sunnicks on Executors, Administrators and Probate* (Steven & Sons, 1993); *Lily Iskandar & Anor v Bonardy Leo & Ors* [1986] 1 MLJ 368). Given that the trial of the consolidated actions are fixed in January 2012, it must be in the interest of the beneficiaries of the estate that the trial proceeds so that the matter in dispute between the beneficiaries can be finally determined.

JIGARLAL'S SUBMISSION

[8] Learned counsel accepted that ARB is still the administrator. However, he argued that ARB's appointment does not confer any status or locus. ARB's powers to act as the administrator is subject to getting a grant. The power under a grant is not retrospective. As such, even if a grant is issued, ARB did not have the locus standi to initiate Suit 195. Learned counsel also argued that the petition be dismissed or the court, make a limited grant forward and not backwards as the doctrine of relation back did not apply (*Ingall v Moran* [1944] KB 160).

DECISION OF THE COURT

[9] The power of the court to issue letters of administration *pedente lite* is provided under s 19 of Act 97 which reads as follows:

19 Letters of administration pendente lite.

Pending any probate action, letters of administration may be granted to such person as the Court may appoint, limited so that the administrator shall not be empowered to distribute the estate, and shall be subject to such control by, and direction of, the Court, as the Court deems fit; and subject to that limitation the administrator so appointed shall have all the rights and powers of a general administrator.

[10] The object of such a grant is to ensure that the estate of the deceased is managed and preserved for the benefit of the beneficiaries. A person unconnected with the suit is the most proper person to be appointed to the office (*Williams, Mortimer and Sunnicks on Executors, Administrators and Probate* (Steven & Sons, 1993)). In *Lily Iskandar & Anor v Bonardy Leo & Ors*, the Singaporean Court of Appeal upholding a limited grant of letters of administration *pendente lite* in the court below described it as 'an interim measure intended to preserve the disputed property intact'.

[11] The principal objection taken by Jigarlal pertains to the non-application of the doctrine of relation back. If that argument is accepted, then it follows that Suit 195 is unsustainable and must be struck out. This argument is misconceived as Suit 195 was initiated by the executors Damayanti and Jogesh. It is a general rule that an administrator may only sue after sealing of the letters of administration (*Ingall v Moran*). Be that as it may, *Ingall v Moran* is distinguishable on the facts. Firstly, the action in that case was a claim for damages, which took on an offensive nature. This can be contrasted with Suit 195 and OP 13 which were brought to protect and preserve the assets of the estate. Secondly, in *Ingall v Moran*, it was not certain at the time when the writ was issued, whether any particular person would be administrator of the estate. In the present case, there was no such uncertainty as ARB had already been appointed as administrator by the High Court and the Court of Appeal.

[12] In *Mills v Anderson* [1984] 1 QB 704 the English High Court recognised the existence of an exception to the general rule in *Ingall v Moran*. It is this — relation back exists only in cases where the act done is for the benefit of the estate. Under this exception, the court should consider whether in the particular circumstances of the case an act by an administrator prior to the sealing was for the benefit of the estate. The test is an objective test without reference to the subjective intentions of the administrator when performing the act. If so, that act would be held as valid by the court. On the facts, the court finds that Suit 195 and OP 13 was brought for the benefit of the estate as it relates to certain shares which is said to be held by Jigarlal on trust for the estate. Both Suit 195 and OP 13 were essential actions to preserve and protect the estate (*Caudle v LD Law Ltd* [2009] 2 All ER 1020 at p 1027).

[13] At this juncture, it is pertinent to note that Jigarlal had previously

challenged ARB's authority in two applications to strike out Suit 195 and OP 13. Both applications were subsequently withdrawn by Jigarlal on 31 March 2008 and he agreed to proceed to the trial of the consolidated actions. This approbation and reprobation by Jigarlal is untenable. Jigarlal is therefore estopped by conduct from taking the position that ARB does not have the locus standi to maintain Suit 195 if letters of administration pedente lite is granted.

[14] In this case the petition for letters of administration pedente lite is expressly limited to the terms set out in para 8 of the petition. In order to appreciate its full terms and effects, the paragraph is reproduced below:

> 8. Sejak pemfailan untuk Geran Surat Kuasa Mentadbir dengan Wasiat Terlampir pada 1.11.2011 oleh Pempetisyen, suatu Saman Minta Arahan telah ditetapkan untuk pendengaran pada 13.12.2011. Sebagai langkah berhati-hati, dan dalam menjangka suatu tindakan probet diarahkan (yang mana tidak diakui), syarikat yang mempetisyen permohonan untuk surat kuasa terhad/pendente lite berasaskan Perintah Mahkamah Tinggi Malaya di Johor Bahru bertarikh 29.7.1995 dan Perintah mahkamah Rayuan bertarikh 4.6.1998 yang dilampirkan dan ditandakan sebagai eksibit di sini, dan menurut Seksyen 19, 23 dan 24 Akta Probet dan Pentadbiran 1959 yang terhad kepada kuasa pentadbiran harta pusaka simati untuk memulakan, meneruskan atau membela tindakan guaman supaya mendapat kembali aset-aset bagi manfaat dan kepentingan harta pusaka simati, termasuk tetapi tidak terhad kepada:
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> (i) Guaman Sivil No. 22-195-1991 di Mahkamah Tinggi Johor Bahru;
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> (ii) Guaman Sivil No. 22-169-1911 di Mahkamah Tinggi Johor Bahru;
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> (iii) Saman Pemula No. 24-985-1991 di Mahkamah Tinggi Johor Bahru;
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> (iv) Saman Pemula No. 24-1141-1997 di Mahkamah Tinggi Johor Bahru;
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> (v) Saman Pemula No. 24-1189-1997 di Mahkamah Tinggi Johor Bahru;
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> (vi) Petisyen Pemula No. 26-13-2005 di Mahkamah Tinggi Johor Bahru; dan
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> (vii) Guaman Sivil No. 22-394-2003 di Mahkamah Tinggi Johor Bahru (Guaman Sivil No. D4-22-3863-1998).

[15] It is clear that the grant of letters of administration sought is limited to the prosecution of the on-going consolidated actions. It is especially pertinent to note that the petition was presented after the consolidated actions had been set down for trial and pending the hearing of the probate action. In the circumstances aforesaid, it cannot be denied that Suit 195 and OP 13 were brought for the benefit of the estate.

[16] It is equally important not to lose sight of the fact that since the filing of Suit 195 in 1991, a total of six other actions have been filed in connection with the same subject matter. Flowing from these actions, there are pending ten interlocutory applications. Both petitions together with the ten interlocutory applications were fixed for hearing on 16 December 2011. However, after hearing of counsel for the parties the court ruled that all the ten interlocutory applications together with the petition for letters of administration with will attached will be heard after the evidence is taken at the trial of the consolidated actions; with parties at liberty to take up the issues during the trial by way of evidence and or on submission at the end of the trial. The ruling was made in the light of the fact that the ten interlocutory applications raise several points under the consolidated actions. If the interlocutory applications had been heard on 16 December 2011 and any application or point of objection fails, an appeal is invariably lodged raising the spectre that the proceedings will be further stayed pending the hearing of the appeal(s). This will give rise to further serious delays in the just, expeditions and economical disposal of the consolidated actions. In fact, all the issues and objections under the interlocutory applications could have been taken at the upcoming trial of the consolidated actions. If so, there would only be one judgment dealing with all the points taken. This observation is justified by the fact that Suit 195 filed in 1991 has yet to be tried after a period of more than 20 years. This undesirable state of affairs have been amply noted by Abdul Hamid Embong FCJ in the chronology of events in the Federal Court grounds of judgment (see *Jigarlal Kantilal Doshi v Amanah Raya Berhad* [2012] 1 AMR 121). It is therefore in the interest of justice that the trial of the consolidated actions proceed expeditiously without any further delay, (see *Maril-Rionebel (M) Sdn Bhd & Anor v Perdana Merchant Bankers Bhd and other Appeals* [2001] 4 MLJ 187 at pp 195–196; [2001] 3 CLJ 248 and at pp 256–257 (CA)).

[17] In concluding, there is nothing to preclude the court for holding that in all the circumstances the granting of the letters of administration *pendente lite* is essential to the preservation and protection of the estate of KP Doshi. The prosecution of the consolidated actions will lead to a final resolution of the principal issue relating to whether the shares held by Jigarlal is held on trust for the estate. This action is being done for the benefit of the estate and must be sanctioned by clothing ARB with the necessary power and authority to continue with the prosecution of the consolidated actions.

A **[18]** In the circumstances of the case, the petition for limited letters of administration *pedente lite* ought to be granted. Order accordingly.

Reported by Kanesh Sundrum

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